IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

SUPREME COURT, U.S.
FILED
JAN 5 1972
E. ROBERT SEAVER, CLERK

No. 70-5211

RADIE WRIGHT, *et al.*, *Appellants*,

v.

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, *Appellee*.

No. 70-161

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, *Appellant*,

v.

RADIE WRIGHT, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS AND CROSS APPELLEES RADIE WRIGHT, *et al.*

ROBERT N. SAYLER
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

EDWARD E. SCHWAB
Neighborhood Legal
Services Program
666 Eleventh Street, N.W.
Washington, D.C. 20001

Attorneys for Appellants and Cross Appellees Radie Wright, et al.

Washington, D. C. · THIEL PRESS · 202 · 393-0625

TABLE OF CONTENTS

Page

ARGUMENT:

I. The Procedures Proposed By the Government Do Not Satisfy Rudimentary Due Process or Equal Protection Guarantees 3

II. Government Claims of Cost or Burden Cannot Justify Failure To Afford Basic Constitutional Protections 9

CONCLUSION 13

TABLE OF AUTHORITIES

Cases:

Armstrong v. Manzo, 380 U.S. 545 (1965) 6

Bell v. Burson, 402 U.S. 535 (1971) 8, 9

Cafeteria Workers v. McElroy, 367 U.S. 886 (1961) 6

Goldberg v. Kelly, 397 U.S. 254 (1970) . . . . . 2, *et seq.*

Gonzales v. United States, 348 U.S. 407 (1955) 5

Grannis v. Ordean, 234 U.S. 385 (1914) 6

Greene v. McElroy, 360 U.S. 474 (1959) 6

Hannah v. Larche, 363 U.S. 420 (1960) 6

Kent v. United States, 383 U.S. 541 (1966) 13

Londoner v. Denver, 210 U.S. 373 (1908) 7

Richardson v. Perales, 402 U.S. 389 (1971) 4, 5

Shapiro v. Thompson, 394 U.S. 618 (1969) 9

Simmons v. United States, 348 U.S. 397 (1955) 5, 6

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) 8

United States v. Nugent, 346 U.S. 1 (1953) 5, 6

Wisconsin v. Constantineau, 400 U.S. 433 (1971) 8

Statutes, Rules and Regulations:

42 U.S.C. §404 12

45 C.F.R. §205.10 10

36 Fed. Reg. 3035 10

D.C. Reg. 68-20 12

HEW Claims Manual 9

Pub. L. No. 92-129, 85 Stat. 353 6

Miscellaneous:

Brief of Appellees, *Goldberg v. Kelly* 12

DHEW Publication No. SRS 72-03257 13

Davis, *Administrative Law*, §7.01 3

Dixon, *The Social Security Disability Program: A System in Crisis* (Oct. 27, 1971) 10, 11

NCSS Report A-9 (1-3/70) 13

NCSS Report A-11 (4-6/70) 13

Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 40 ..... 5, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-5211

RADIE WRIGHT, *et al.*, *Appellants*,

v.

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, *Appellee*.

No. 70-161

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare, *Appellant*,

v.

RADIE WRIGHT, *et al.*, *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS AND CROSS APPELLEES RADIE WRIGHT, *et al.*

After defending existing procedures for suspension and termination of disability payments throughout this case, the Government now concedes that these procedures are unconstitutional. Abandoning its earlier contention that any recipient "participation in the determination proceedings" would disrupt the adjudicative process (Juris. St. 11), the Government now recognizes that a recipient must be "afforded a fair opportunity of correcting or contradicting anything prejudicial to his view before decision is reached" (Gov't Br. 24), and it promises that the Secretary, "in order

to afford reasonable notice and opportunity to participate in the determination proceedings, will adopt a procedure whereby the individual will be informed of the proposed adverse action and the information upon which it is based and will be given the opportunity to respond in writing before adverse action, if any, is taken." (Gov't Br. 22.)[1]

The Government continues to resist the requirement, imposed by the court below, that resolution of conflicting evidence be made by an impartial decision maker, and it also would decline to provide, even in the face of conflicting evidence of the recipient's continued disability, an opportunity for a preliminary oral hearing satisfying the "rudimentary" and "minimal" requirements prescribed in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and the other cases we have cited.[2] The Government's position is that the requirement of an opportunity "to be heard," the "fundamental requisite" of due process, can be satisfied by a so-called

---

[1]The Government's decision to afford some procedural rights at some point in the future does not obviate the need for a ruling on the constitutional rights of recipients. So far, the Secretary has not even announced proposed procedures, and there is no way to know the kind of notice to be afforded, how long the recipient would have to file a response, and what data the recipient would be entitled to review. The court below said that the recipient should be given an opportunity to examine all of the documentary evidence supporting the proposed cessation. The Government now merely proposes that the recipient "be informed of . . . the information upon which [the adverse action] is based," which may contemplate supplying only summaries of the adverse information rather than providing an opportunity to examine that information. This Court should hold that disability suspensions or terminations be preceded by: (1) reasonable notice, (2) ample time for the recipient to file his response prior to cessation, and (3) an opportunity for the recipient to examine all adverse documentary evidence in his file.

[2]The Government reads the decision of the lower court to *require* an opportunity for an oral hearing. We have indicated that the decision may be construed as leaving the matter discretionary, and we urge the Court, should it be disposed to affirm the decision below, to make clear that an opportunity for an oral hearing is mandatory.

"hearing on paper."[3] (Gov't Br. 23, 24.) No authority is cited for this novel proposition. It rests entirely on the assertion that "a 'fair opportunity' can be afforded through written submissions." (Gov't Br. 24.) We submit that this position cannot be sustained in the face of the applicable case authority and the nature of disability determinations.

I. THE PROCEDURES PROPOSED BY THE GOVERNMENT DO NOT SATISFY RUDIMENTARY DUE PROCESS OR EQUAL PROTECTION GUARANTEES.

The Government concedes that "in many situations the right to a hearing comprehends an oral presentation at which the party may present evidence and confront and cross-examine witnesses." (Gov't Br. 23, 24.) It claims that this is not one of those "many situations" and concludes that disability recipients are not entitled to an opportunity to appear personally and present evidence, confront and cross-examine adverse witnesses, retain counsel, and a decision by an impartial person, based on the record, with an adequate explanation of its basis.

The asserted justification for this mere "hearing on paper" is that "social security disability payments are suspended only on the basis of an objective consideration—that the previous disability has ceased—and that conclusion rests on reliable information." (Gov't Br. 26.) The Government then claims that disability determinations are different from determinations made in *one* other context in which prior hearings have been required—welfare terminations—because welfare terminations "may" rest on "credibility and veracity" whereas this is not necessarily so in the disability context. (Gov't Br. 25, 26.)

---

[3] The concept of a "hearing on paper" is contradictory on its face. As Professor Davis has written, no matter how narrowly it is defined, a hearing means "any *oral* proceeding before a tribunal." (Emphasis added.) Davis, *Administrative Law*, § 7.01, at 407.

The most serious defects in the Government's argument are:

1. The claim for "objectivity" and "reliability" of the evidence utilized in cessation of benefits has nothing whatsoever to do with determinations to *suspend* payments as distinguished from determinations to terminate. A decision to suspend means *only* that an inquiry has begun, and it means further that the Secretary has *not* determined that he has sufficiently objective or reliable evidence to justify a termination—a termination can be mandated only "after a more thorough investigation to verify the individual's disability status." (Gov't Br. 3.) Whatever force there may be to the Government's argument about "reliability" and "objectivity" of cessation determinations, it cannot justify summary suspension actions. At least in these cases—where by definition the Government can have no claim of objective proof of cessation of disability—a hearing is constitutionally mandated prior to cessation of payments.

2. It is not true that documents generally utilized to support suspension or termination, *i.e.*, doctors' or employers' reports,[4] constitute objective and unassailable proof that disability has ceased.[5] The text of the statute, its legisla-

[4] These are not the only bases on which suspensions or terminations may occur. As the Government points out, a cessation can occur where the Department determines that "the beneficiary refuses to cooperate"—by any construction a highly subjective judgment (Gov't Br. 15). This was the ground on which welfare benefits had been terminated in the *Goldberg* case and with respect to which pre-termination oral hearings were mandated. Goldberg v. Kelly, *supra* at 255 n. 2.

[5] The Government places principal reliance upon Richardson v. Perales, 402 U.S. 389 (1971), in support of its argument as to the objectivity and reliability of physicians' reports. But, as we have indicated (at page 38 of our main brief), that case does not say that a hearing is unnecessary in the face of a doctor's report. On the contrary, that case affirms the necessity for oral hearings and the right of disability recipients to subpoena doctors and otherwise to make a case at an oral hearing. In fact, even though a full hearing had been held in that case, this Court did not affirm the agency's decision that doctors' reports constituted "substantial evidence" that there was no

tive history, the applicable regulations and internal manuals—which emphasize the subjectivity and complexity of disability determinations and the need to make disability determinations on the basis of all the facts of each case without resort to easy litmus tests for determining whether disability has or has not ceased—and the extremely high reversal rates in post-termination hearings belie the claim of the invincibility of this "objective" evidence.[6] Thus, to the extent that employers' or doctors' reports are "objective" or "reliable," that merely makes them factors to be considered in a continuing disability determination—not conclusive judgments that preclude the recipient from probing their basis or presenting his own affirmative evidence on continuing disability.

3. No authority supports the Government's position that a conceded right to a prior hearing can be satisfied by a "hearing on paper" in the face of disputed facts. The cases cited arising under the Selective Service Act (*United States v. Nugent*, 346 U.S. 1 (1953); *Gonzales v. United States*, 348 U.S. 407 (1955); *Simmons v. United States*, 348 U.S. 397 (1955)) do not remotely suggest that a hearing requirement can be satisfied by a "hearing on paper."[7] These

disability; the Court held only that medical reports *could be* substantial evidence and remanded to the District Court to weigh the evidence in light of that holding. *Perales*, *supra* at 410. *See* Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 40, at 330-31 n. 31.

[6]It appears from statistics recited in the Government's brief that hearing reversals of disability determinations are now even higher than we have recited and that, during fiscal 1971, well over one-half of the disability cessation cases, which have proceeded through a hearing, have been reversed. (App. B.)

[7]The cases had to do with the rights of a draft registrant, claiming conscientious objector status, to review during various stages of an elaborate appeal machinery "secret" FBI reports, a resume of the evidence contained in those reports, and an "advisory" Department of Justice recommendation to an Appeal Board following an "auxiliary" hearing at the Department. The Court held that a registrant was entitled to production of the latter two, but not the former, striking a balance between the registrant's interests and the "demands of an effective system for mobilizing the Nation's manpower in times of

three cases confirm the necessity for an oral hearing prior to definitive action.[8]

---

crisis." *Simmons*, *supra* at 403. The Court justified withholding the "secret" FBI reports on the ground that other safeguards in the procedure, including the right to an oral hearing at both the draft board and various appellate levels, "maintained the basic elements of fair play." *Id.* As the Court said in United States v. Nugent, *supra* at 6, 7: "no sham substitute will meet [a hearing] requirement . . . . We think the Department of Justice satisfies its duties [to provide a hearing on appeal] when it accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer; when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a fair resume of any adverse evidence . . . ." Moreover, Congress has now guaranteed a "fair hearing" to selective service registrants asserting a claim before a local or appeal board and has provided that even in this area where "informal and expeditious processing . . . [is] required," a "fair hearing" *requires* at least that a registrant have (1) an opportunity to make a personal appearance, (2) a right to present witnesses, and (3) a right to a written statement of the reasons for an adverse decision. Military Selective Service Act of 1967, 1971 Amendments Pub. L. No. 92-129, § 101 (36)(a), (b), 85 Stat. 353 (Sept. 28, 1971).

[8]Other cases cited by the Government are also contrary to its position. Hannah v. Larche, 363 U.S. 420 (1960), Armstrong v. Manzo, 380 U.S. 545 (1965), Grannis v. Ordean, 234 U.S. 385 (1914), and Greene v. McElroy, 360 U.S. 474 (1959), affirm that "the fundamental requisite of due process is the opportunity to be heard" (*Grannis*, at 394) "in a meaningful manner" (*Armstrong*, at 552); that agencies must "use the procedures which have traditionally been associated with the judicial process" in making binding adjudicative decisions (*Hannah*, at 442); and that opportunity for confrontation and cross-examination of adverse witnesses is a "vital feature" of the law, the "formalized" embodiment of due process (*Greene*, at 496, 497). The only other case cited in the Government's substantive argument, Cafeteria Workers v. McElroy, 367 U.S. 886 (1961), is one where basic due process constraints were held inapplicable because the Government was operating in its proprietary capacity. The case has nothing to do with this case where the Government concedes that due process protections must be afforded and makes no claim that the Government acts in a proprietary role in cutting off welfare payments.

4. The Government cannot distinguish *Goldberg v. Kelly*. It seeks to differentiate that case on the ground that welfare terminations "may" result from "tips, rumor or gossip," thereby raising "credibility or veracity issues" which allegedly "will not be in issue" in disability cases. (Gov't Br. 25, 26.) There are serious flaws in this analysis.

(a) *Goldberg* does *not* say that an oral hearing is required only where informant credibility issues are raised. The principle established in *Goldberg* is that the constitutional requirement of a "meaningful hearing" cannot be satisfied by written submissions but requires:

> "that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, *where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.*" (At 267-268. Emphasis added.)

These principles squarely apply to disability cases. The Court in *Goldberg* expressly declined to confine its ruling to cases presenting tipster or other credibility issues (at 269). In fact, the only named plaintiffs described by the Court raised factual issues which did not present this type of credibility issue (one was terminated for failure to cooperate with the Welfare Department and the other for alleged failure to accept counseling), *Goldberg, supra* at 256 n. 2. Moreover, the oral hearings mandated in *Goldberg* cover welfare disability determinations raising the precise issues which would be raised in social security disability cases (*see* App'ts Br. 35).

(b) Cases decided by this Court in other contexts have not confined the requirement of a prior oral hearing to situations presenting only tipster or other forms of credibility issues. *See, e.g., Londoner v. Denver*, 210 U.S. 373 (1908),

Wisconsin v. Constantineau, 400 U.S. 433 (1971), *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), *Bell v. Burson*, 402 U.S. 535 (1971), and many of the other cases we cited in our main brief at pages 17-21 and 42-46.

(c) The argument as to the special necessity for cross-examination only where credibility issues are presented focuses entirely on only one aspect of the protections afforded by an oral hearing. Even if valid, the argument would not justify withholding the rights to appear personally, a determination by an impartial decision maker, and a written decision based on the facts and rules adduced at the hearing. These protections are especially important in a disability case[9] where, for example, personal appearance by the recipient gives him an opportunity to demonstrate in person his impairment, testify to the difficulties caused thereby, and answer specific inquiries by the decision maker.

(d) In any event, there *are* credibility issues in disability cases. As stated in a recent note in the Harvard Law Review, upon which the Government places substantial reliance:

> "Even apparently objective [medical] reports may involve threshold evaluations of credibility and may be based partially on the attitude of the doctor toward disability claimants. [Citations omitted.]" Note, *supra* at 330 n. 31.

Moreover, there may be "credibility" issues with respect to the thoroughness of the doctor's examination[10] or the ability of an employer properly to evaluate the recipient's work performance and any possible impact of this disability on

---

[9] This is particularly so if, as the Government contends, some elevated status is necessarily afforded to employers' or doctors' reports. It appears from the high reversal rate that the only effective way to overcome these reports may be a personal appearance and a requirement of a written decision based on the evidence adduced at a hearing.

[10] That factor was very much in issue in the case of plaintiff John Atkins (A. 80).

that performance.[11] And since the *recipient's* credibility is squarely at issue in virtually any disability determination, his prospects for convincing the decision maker of the truthfulness of his claim may well be materially enhanced if the recipient has an opportunity to make an oral presentation.

II. GOVERNMENT CLAIMS OF COST OR BURDEN CANNOT JUSTIFY FAILURE TO AFFORD BASIC CONSTITUTIONAL PROTECTIONS.

This Court has repeatedly stated that although constitutional protections rarely can be afforded without some cost or administrative inconvenience, that fact cannot justify the withholding of basic constitutional rights. *See, e.g., Shapiro v. Thompson*, 394 U.S. 618 (1969); *Goldberg v. Kelly, supra; Bell v. Burson, supra.* The Government does not dispute that proposition, but nonetheless undertakes a showing of the cost and burden which allegedly would flow from a hearing requirement. Although we do not believe that any such claim can defeat this constitutional requirement, we briefly summarize below the flaws in the Government's position.

The Government claims that providing an impartial decision maker or an opportunity for a preliminary hearing would require a "massive restructuring of the existing administrative adjudicative process" (Gov't Br. 27) because the Administration's district offices are not staffed with persons "qualified to make" disability determinations so that either State agency or central-office federal officials would have to decide[12] and/or hear proposed cessation cases (Gov't Br.

[11] The Government cites to an internal "Claims Manual" which says that benefits should not be terminated "solely" on the basis of a report from an informant (Gov't Br. 26). This suggests that informants' reports may be utilized in disability cases and provides little comfort to recipients since it says only that some scintilla of other evidence should be available prior to suspension—it by no means precludes substantial reliance on tipsters.

[12] The "massive restructuring" argument has nothing to do with the requirement, imposed by the court below, that cessations at least be decided by impartial decision makers. We do not understand the Government to contend that any restructuring would be required to provide this protection.

29). We fail to see what substantial burden would be caused if State agency offices (several of which already have multiple offices scattered throughout the state) process these cases or, in the alternative, if existing hearing examiner machinery is invoked to conduct pre-cessation hearings. Examiners now preside over the post-termination cases, always at a location near the recipient's home, and they could process the preliminary hearings without any organizational overhaul—simply by changing the timing of the present hearing. The Government's failure to mention the latter possibility in its argument here or below seems inexplicable, especially in light of the manner in which *Goldberg* has been implemented.[13] Moreover, even if some "restructuring" would be necessary to provide opportunity for a pre-cessation hearing, it can hardly be said that this would be a crushing blow to the fair and effective operation of the program. In fact, a recent elaborate report to the Administrative Conference of the United States on the disability program concludes that just this sort of restructuring should be undertaken. Dixon, *The Social Security Disability Program: A System in Crisis* (Oct. 27, 1971).[14]

* * * * *

[13] By regulation the Secretary has required states to integrate the due process requirements enunciated in *Goldberg* into the statutorily required post-termination hearing conducted by state hearing examiners. 45 C.F.R. §205.10, 36 Fed. Reg. 3035-3036 (1971)—notwithstanding the fact that *Goldberg* would have been satisfied by hearings conducted by officials in *local* welfare offices. The same logic would point toward use of existing hearing examiners to hear disability cases.

[14] The report recommends decentralization of either the State agency personnel or BDI staff for purposes of making determinations of disability. This is because, under present procedures, recipients have no face-to-face contact with decision makers either at the initial determination or reconsideration levels. It is only at a post-termination hearing that a recipient ever confronts a decision-maker. "Lack of such [face-to-face] contact is thought to be one inducement for appeal to the hearing examiner level, and the hearing examiner's personal contact is thought to be an element in the high reversal rate." At 132-133.

The Government argued in the lower court that the cost of delaying disability cessations pending a hearing would be in the range of $40 to $50 million (A. 34). This claim was sharply challenged by plaintiffs, and the lower court held that "whatever their magnitude" additional expenses "are insufficient justification considering the crippling blow that could be dealt to an individual in these circumstances" (A. 99). The Government has revised its computations and now says that a preliminary hearing requirement would cost some $16 million.

We do not deny the possibility of some additional costs arising from continued payments to persons who request a preliminary hearing, pending the completion of that hearing. It is clear, however, that the Government's $16 million cost estimate[15] is greatly inflated because it rests on a series of incorrect assumptions:

---

[15] The Government also undertakes a floodgates argument to the effect that a vast number of cessations in other Title II programs would be affected by requirements imposed in the disability area and that the ultimate cost would exceed even the $16 million figure. The Government's analysis is unsound. First, this is a class action entirely on behalf of disability recipients, and the relief sought is necessarily confined to disability payments. The principles on which we rely may, of course, dictate that the protections sought be carried over to some cessations of payments under other Title II programs—but only in those instances where substantial and disputed fact issues exist. The Government concedes that the vast majority of Title II cessations would not raise such issues but it contends that some 515,000 Title II cases would be affected annually—over ten times as many as in the disability area. This is difficult to credit since hearing examiners presently spend 85% of their time hearing disability cases even though other Title II programs dwarf the disability program both in number of recipients and cessations. Dixon, *supra* at 36. Moreover, the Government includes in the 515,000 cases some 223,000 terminations where a child drops out of school, 106,000 terminations resulting from marriage, remarriage or divorce of a beneficiary, or death, or adoption of a child; and all disability terminations, including a large number of dependents' disability cessations where the essential determination centers around the status of the disabled wage earner, not the dependents. Suffice it to say that these cases would not typically present the complex and subjective issues raised in disability cessation cases. The Government's numbers are further inflated because they rest on each of the erroneous assumptions set forth below.

1. It assumes that preliminary hearings would require a full two months over and above the time which would be required to afford notice, an opportunity to examine adverse evidence and to file a written statement—all of which the Government has now promised to provide. We do not understand why that is so and the Government has not explained why this substantial delay would be necessary.

2. It assumes that the Government cannot recover any payment improperly made during the period following an initial determination that disability has ceased and before a hearing is held. The Government has substantial powers to recover any "overpayments" of disability payments by reducing future social security payments, settlement, or civil litigation. *See* 42 U.S.C. § 404.

3. It assumes that none of these "overpayments" falls within those categories of "overpayments" as to which "waiver" of the Government's claim is mandated by the Act. 42 U.S.C. § 404. Any payments which should be waived in furtherance of the Act surely do not constitute an unwarranted drain on the Trust Fund.

4. It assumes that the opportunity for a hearing will be grossly abused and that *all* recipients, whether or not they have a colorable claim, will seek hearings in an effort to gain unwarranted payments. This fear of frivolous and unanimous requests for hearing is wholly unsubstantiated and belied by actual experience. A majority of recipients either forego or neglect their opportunity for post-termination hearings. There has been no evidence whatsoever of abuse in the welfare area where pre-termination hearings have been required by statute or regulations. *See* Brief of Appellees, *Goldberg v. Kelly*, at 57-58.[16]

---

[16] The District of Columbia experience with welfare hearings is illustrative. D.C. welfare recipients have had a right to hearing prior to termination, suspension, or reduction of payments since December 1968. D.C. Reg. No. 68-20. Statistics for the period from January through June 1970 (the only period for which statistics are available) indicate that welfare payments in 3,143 cases were terminated. There were 270 requests for hearings. Of the 270 cases decided, 160 were

5. Finally, the Government assumes that the initial disability cessation determination would be *sustained* at all hearings. The fact is that in roughly half of the cases in which hearings are now held, the initial determination is reversed and the recipient is found entitled to payments. Additional costs could possibly be occasioned only where the hearing decision was adverse to the recipient.

CONCLUSION

The minimal procedural protections we seek are not mere technical formalities. The right to a hearing is vital to the fair resolution of disputed facts, and the importance of that right has been borne out in the disability area where a vast number of errors have been rectified by the untimely hearings now provided. For many, adverse summary terminations are devastating, forcing disabled persons to cast about for many months in an effort to find some other form of support for their most basic needs. As this Court has said:

> "... there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons." *Kent v. United States*, 383 U.S. 541, 554 (1966).

---

in favor of recipients while 110 sustained proposed agency action. HEW Reports: DHEW Publication No. SRS 72-03257, NCSS Report A-9 (1-3/70), and NCSS Report A-11 (4-6/70).

That "ceremony" should include, at the least, the "minimal" protections mandated by this Court in other cases and cannot be satisfied by a "hearing on paper."

Respectfully submitted,

Robert N. Sayler
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Edward E. Schwab
Neighborhood Legal
Services Program
666 Eleventh Street, N.W.
Washington, D.C. 20001

Attorneys for Appellants and Cross Appellees Radie Wright, et al.

December 30, 1971